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REPORTS

OF MALAYSIAN, SINGAPORE AND BRUNEI CASES DETERMINED IN THE HIGH COURTS, THE SUPREME COURT OF MALAYSIA, THE COURT OF APPEAL AND THE COURT OF CRIMINAL APPEAL OF SINGAPORE, AND THE PRIVY COUNCIL.

SINGAPORE REPORTS

Times Publishing Bhd & Ors v S Sivadas

HIGH COURT (SINGAPORE) – SUIT NO 5888 OF 1984
GRIMBERG JC
4 JULY 1988

Parliament – Parliamentary privilege – Written representations submitted on Companies (Amendment) Bill – Defamatory statements made – Defendant not asked to give oral evidence before Select Committee – Whether written representations formed part of the parliamentary process – Whether defence of absolute privilege available – Parliament (Privileges, Immunities and Powers) Act (Cap 49, 1970 Ed), ss 4, 5(2) & 17(1)

Tort – Defamation – Written representations on Bill submitted to Select Committee – Defamatory statements made – Parliamentary privilege – Absolute – Parliament (Privileges, Immunities and Powers) Act (Cap 49, 1970 Ed), ss 4, 5(2) & 17(1)

Words and Phrases – 'Person' – Parliament (Privileges, Immunities and Powers) Act (Cap 49, 1970 Ed), s 5(2)

The defendant submitted written representations to the Clerk of Parliament in response to a notice made by the Clerk inviting representations on the Companies (Amendment) Bill from the public, for the consideration of the Select Committee. The defendant was not invited to give oral evidence before the Select Committee. The plaintiffs took the view that they had been gravely defamed by certain of the statements which formed part of the defendant's representations and issued a writ against him claiming damages for defamation and an injunction to restrain the defendant from further publishing the statements. The defendant raised the defence of absolute privilege and subsequently applied for the following preliminary issue to be determined by the court, ie whether the defence of absolute privilege is as a matter of law available to the defendant.

Held: (1) The act of the defendant in submitting written representations was so ancillary to, and connected with, proceedings in Parliament as to become part of those proceedings. They were part of the parliamentary process by which the House reached its decision on the Bill laid before it.

(2) The fact that the defendant was not invited to attend before the Select Committee in order to give evidence in support of his representations should not affect the character of the representations he made, in the sense of clothing them with absolute privilege if he gave evidence in support of them and depriving them of privilege if he did not.

(3) The word 'person' in s 5(2) of the Parliament (Privileges, Immunities and Powers) Act means any person and includes strangers. Both the Clerk of Parliament and the defendant, the one by inviting representations and the other by responding to his invitation, were performing acts under the authority of Parliament by virtue of Standing Order 75. It follows that the defendant is entitled to the immunity provided by s 5(2) of the Act.

(4) There is no conflict between the provisions of ss 4, 5(2) and 17(1) of the Parliament (Privileges, Immunities and Powers) Act. Section 4 is a general statement which reflects art 9 of the UK Bill of Rights; s 5(2) deals with the acts of all persons done under the authority of Parliament and s 17(1) confers immunity on all persons who appear and give evidence in person. The facts of the present case have resulted in an overlap in the provisions of ss 5(2) and 17(1) but that is not an uncommon result of the proper construction of a statute.

(5) There was nothing before the court to suggest that in Singapore, written representations to the Select Committee have been regarded by representors as charters to defame under the cloak of absolute privilege. Were that to happen, it would be reasonable to expect Parliament to enact legislation to define proceedings in Parliament so as to exclude written representations to the Select Committee in cases where the representor does not attend and give evidence in person. Unless and until such legislation is passed into law in Singapore, it remains in the overriding public interest that written representations to Parliament should attract absolute privilege so that persons making them in the discharge of their rights should feel free to do so without being threatened with, or vexed by, proceedings whether they be civil or criminal.

Cases referred to

1 *Times Publishing Bhd & Ors* v *S Sivadas* [1986] 1 MLJ 372 (refd)
2 *Lake* v *King* (1667) 1 Wms Saund 131; 85 ER 137 (folld)
3 *Goffin* v *Donelly* (1881) 6 QBD 307 (refd)
4 *Rivlin* v *Bilainkin* [1953] 1 QB 485 (refd)
5 *Re Parliamentary Privilege Act 1770* [1958] AC 331 (refd)
6 *Church of Scientology of California* v *Johnson Smith* [1972] 1 All ER 378 (refd)
7 *R* v *Secretary of State, ex parte Anderson Strathclyde Plc* [1983] 2 All ER 233 (refd)
8 *R* v *Murphy* 64 ALR 498 (refd)
9 *Roy* v *Prior* [1971] AC 470 (refd)
10 *Bradlaugh* v *Gossett* (1884) 12 QBD 271 (refd)

Legislation referred to

Australian Constitution art 49
Parliament (Privileges, Immunities and Powers) Act (Cap 49, 1970 Ed) ss 3(1), (2), 4, 5, 17, 20(2)
UK Bill of Rights 1688 art 9

Lord Irvine Lairg QC (*AP Godwin* with him) for the plaintiffs.

Wong Meng Meng (*Annabelle Yip (Miss)* with him) for the defendant.

Cur Adv Vult

Grimberg JC: The Companies (Amendment) Bill was committed to a Select Committee, by resolution of Parliament, on 17 January 1984. On 26 January 1984, the Clerk of Parliament caused to be published in the *Straits Times* a notice inviting representations on the Bill from the public, for the consideration of the Select Committee.

In causing the notice to be so published, the Clerk had acted in pursuance of Standing Order 75, which is in the following terms:

> Unless Parliament otherwise orders, upon a Bill being committed to a Select Committee, the Clerk shall as soon as practicable thereafter advertise in such newspapers as the Speaker may direct, inviting written representations on the Bill to be sent to him within not less than a period of fifteen days from the date of the advertisement and requesting the representors to state whether they are prepared, if required, to appear before the Select Committee to give evidence in support of or supplementary to their written representations.

The Clerk's notice set out the main objects of the Bill, and representors were requested to state 'whether they would be prepared, if invited, to appear before the Select Committee to give oral evidence supporting or supplementing their written representations'.

The defendant, Mr S Sivadas, in response to the invitation contained in the notice, submitted written representations to the Clerk on 7 February 1984. He indicated that he would be prepared, subject to certain travel arrangements, to appear before the Select Committee with a view to giving oral evidence. The defendant's representations were acknowledged by the Clerk in a letter dated 15 February 1984 in which the Clerk stated that the defendant would be informed if the Select Committee decided that he was to be invited to give evidence before it.

The Select Committee held a number of meetings. At the first of these, which took place on 4 April 1984, all written representations then at hand were considered, and it was decided that the Committee would hear oral evidence from a number of representors. The defendant was not among those whose oral evidence the Committee resolved to hear. The Committee also decided at this first meeting that all written representations received by it would be included in its report, when published.

In the result, the defendant was not invited to give oral evidence before the Committee, whose report was presented to Parliament on 12 June 1984. Appendix II to the report comprised the written representations received by the Committee, including those made by the defendant.

The first plaintiffs are newspaper proprietors and publishers and the second plaintiffs are publishers. The third to ninth plaintiffs, all men distinguished in their respective fields, were members of the boards of the first and second plaintiffs when the defendant made his written representations to the Select Committee. They took the view that they had been gravely defamed by certain of the statements which formed part of the defendant's representations, and caused a writ to be issued against him on 24 August 1984, claiming damages for defamation and an injunction to restrain the defendant from further publishing the statements complained of or similar statements.

On 15 November 1984, the defendant's solicitors issued a summons to strike out, asserting that the statements complained of by the plaintiffs could not be the subject of proceedings, by reason of absolute privilege. The application was dismissed with costs by the registrar on 11 January 1985.

The defendant appealed to a judge in chambers. His appeal was dismissed with costs in May 1985. Lai Kew Chai J, while expressing a tentative view that the defendant's written representations to the Select Committee were absolutely privileged, held that it was not so plain or obvious a case as to warrant a striking out — *Times Publishing Bhd & Others* v *S Sivadas*.[1]

Pleadings closed on 24 May 1985. The defendant raises a number of defences, including absolute privilege. Paragraph 8 of the amended defence is in the following terms:

> Further or in the alternative as to para 5 of the re-amended statement of claim herein, the defendant will say that the alleged occasion of publication was an occasion of absolute privilege.
>
> Particulars
>
> The defendant will say that the said words are published in pursuance of an advertisement or notice placed by Parliament of Singapore on 26 January 1984 requesting members of the public to make representations on the said Companies (Amendment) Bill which is a matter of public interest and/or is covered by the privilege given to parliamentary proceedings.
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> Further or in the alternative as to para 5 of the re-amended statement of claim herein, the defendant would say that the alleged occasion of publication was an occasion of qualified privilege.

On 23 July 1985, the defendant petitioned the Public Petitions Committee of Parliament. He asked, inter alia, that the proceedings commenced against him by the plaintiffs be declared a breach of the privileges of Parliament. The Committee sought the opinion of the Attorney General, and in the light of his opinion, reported to Parliament on 16 October 1985 that it would not be proper for Parliament 'to intervene in the legal proceedings against Mr Sivadas'.

There matters rested until 3 March 1986, when the defendant applied for a preliminary issue to be determined by the court. On 25 April 1986, the learned Chief Justice made this order:

> The following question or issue of law be tried as a preliminary issue in this action before the trial of the action and that until the determination of the preliminary question or issue, all further proceedings in the action be stayed, namely, whether the defence of absolute privilege as pleaded in the amended defence herein is as a matter of law available to the defendant as a defence on the facts disclosed in the pleadings herein.

It is common ground that an affirmative answer on the preliminary issue would dispose of the plaintiffs' claim against the defendant.

It is plain, and was not in dispute, that absolute privilege extends to statements made by strangers when so made by them as witnesses physically present in the course of proceedings in Parliament, and that proceedings before a Select Committee are 'proceedings in Parliament'. Accordingly, the sole question is whether absolute privilege extends to written representations made by a witness, who is a stranger, to a Select Committee of Parliament in Singapore, in response to an invitation from Parliament, when the witness has not given oral evidence before the Committee.

I will proceed first by investigating the position in England, and then by considering whether that position is in any way altered by the provisions of the relevant Singapore statute, the Parliament (Privileges, Immunities and Powers) Act ('the Singapore Act').

Lake v *King*[2] concerned the printing of a libel of the plaintiff Lake in a petition addressed by the defendant King to a Committee of the House of Commons 'then and there constituted and appointed, by the Commons then and there assembled in Parliament, to hear and examine the grievances of this realm of England, which said Committee then and there had full power and authority to hear and examine grievances of this kind ...' Having presented his petition to the Committee, Lake was summoned to appear before it. He did so, and gave evidence. It was held that the exhibiting of the petition to the Committee was lawful, and that no action lay for it, notwithstanding that it contained matter which was false and malicious.

The Bill of Rights was passed into law some 21 years after *Lake* v *King*.[2] Article 9 of it provided that 'the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament'. It is clear, on the face of it, that the Bill of Rights was an Act declaratory of 'the rights and liberties of the subject ...' The freedom of speech attaching to proceedings in Parliament was not introduced by the Bill but was a right based upon custom or practice, established certainly by the mid-16th century:

> The practice of claiming these privileges developed gradually. In the reign of Henry IV, the only privilege claimed by the Speaker was for himself, that he might be allowed to inform the King of the mind of the Commons, and that if he made any error in doing so it might be corrected by reference to the House (3 Rot Parl 424; see also ibid, 425).
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> In 1536 there is a definite demand of access to the Crown; in 1541 comes the demand for freedom of speech (by Speaker Moyle, see Elsynge 175-6), and in 1554 the three claims of freedom from arrest, freedom of speech, and of access, were first made together (CJ (1547-1628) 37). By the end of the sixteenth century the practice seems to have become regular (see 2 Hatsell 225 et seq.).
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> Erskine May, 20th Ed, p 73.

Erskine May proceeds to consider the meaning of 'proceedings in Parliament' in the following terms, at p 92:

> The primary meaning, as a technical parliamentary term, of 'proceedings' (which it had at least as early as the seventeenth century) is some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, *and the whole process, the principal part of which is debate, by which it reaches a decision.*
>
> An individual member takes part in a proceeding usually by speech, but also by various recognized kinds of formal action, such as voting, giving notice of a motion etc, or presenting a petition or a report from a Committee, most of such actions being time-saving substitutes for speaking. Officers of the House take part in its proceedings principally by carrying out its orders, general or particular. *Strangers also can take part in the proceedings of a House, eg by giving evidence before it or before one of its committees, or by securing the presentation of their petitions.*
>
> While taking part in the proceedings of a House, members, officers and strangers are protected by the same sanction as that by which freedom of speech is protected, namely, that they cannot be called to account for their actions by any authority other than the House itself.
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> (Emphasis mine.)

In *Goffin* v *Donnelly*,[3] the defendant, in answer to an action for slander, pleaded that the statements complained of were part of the evidence given by him in the character of a witness before a Select Committee of the House of Commons, which had been appointed to inquire into and report upon the circumstances relating to the supervision of the certificate of the plaintiff, a schoolmaster. In the course of its inquiry, the Committee summoned the defendant as a witness, and the words complained of by the plaintiff were extracts from the defendant's evidence as a witness before the Committee.

In holding that the defence of absolute privilege was good, Field J stated:

> It was argued that it was contrary to natural justice that a man should be allowed to be prejudiced by statements made before a Select Committee, upon an occasion when he could

have no opportunity to rebut such statements, and to show that the imputations made upon him were unfounded; but the statement made by the defendant in *Seaman* v *Netherclift* 2 CPD 53 affected a person who was not present, and who had no opportunity of vindicating himself on the occasion when the statement was made. It may be a hardship upon individuals that statements of a defamatory nature should be made concerning them, but the interest of the individual is subordinated by the law to a higher interest, viz, that of public justice, to the administration of which it is necessary that witness should be free to give their evidence without fear of consequences. The plaintiff's counsel drew a distinction between a court of justice and the tribunal before which the statements in this case were made. Can such a distinction be drawn? The House of Commons, in the performance of its functions and for the purposes of legislation, has to inquire into many matters, and among others the conduct of that department of government which deals with education. For the purposes of such inquiries committees are appointed, and require the attendance of witnesses. If persons so required to attend did not attend, they would be committed for contempt. If they do attend they must answer the questions asked of them, and may be examined on oath. The evidence given is, therefore, as much given under compulsion as in the case of a court of law. For these reasons this seems to me to be a stronger case of privilege than some of the occasions that have been held to be clearly privileged.

In *Rivlin* v *Bilainkin*,[4] the plaintiff in an action for slander and libel was granted an interim injunction to restrain the defendant from repeating the alleged defamatory statements. The defendant subsequently delivered, by post and hand, five communications repeating the alleged libel to five members of Parliament. The plaintiff applied for an order convicting the defendant to prison for breach of the injunction. It was held that, since the communications were in no way connected with any proceedings in Parliament, they were not protected by parliamentary privilege so as to oust the jurisdiction of the court to commit for contempt.

Re Parliamentary Privilege Act 1770[5] was a case in which a member of Parliament wrote a letter of complaint to a minister concerning certain activities of an area board of a nationalized industry for which the minister was responsible. The minister forwarded the letter to the board. Upon the board threatening to sue the member for libel, he raised the threat in the House of Commons, as a question of privilege. The Committee of Privileges, which considered the matter, reported that the member, in writing to the minister, was engaged in a proceeding in Parliament, and that the board and its solicitors were in breach of parliamentary privilege. However, having regard to the possible effect of the Parliamentary Privilege Act 1770 on the question, the Committee of Privileges recommended that the opinion of the Judicial Committee of the Privy Council be sought on the issue as to whether art 9 of the Bill of Rights had been impliedly repealed by the 1770 statute. In advising that the Bill of Rights was not affected by the later statute, the Judicial Committee declined to be drawn on whether the member's letter to the minister amounted to a proceeding in Parliament.

However, in a commentary on the case *de Smith on Constitutional & Administrative Law*, 5th Ed, at p 330, states:

> At present the probability is that a court would hold a letter written by an MP to a minister on a matter lying within the minister's general area of responsibility to be protected only by qualified privilege in the law of defamation, *unless the letter was ancillary, or an immediate preliminary, to proceedings within Parliament itself.* Public policy considerations can be canvassed on either side. Letters from members of the public to MPs (and presumably from MPs to members of the public) on matters of public concern enjoy only qualified privilege. So do fair and accurate newspaper reports of parliamentary proceedings.
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> (Emphasis is again mine.)

In *Church of Scientology of California* v *Johnson-Smith*,[6] the plaintiffs brought an action for libel against the defendant, a member of Parliament, for remarks made during a television interview. The defendant claimed, inter alia, that the words complained of were fair comment on certain reports appearing in Hansard, which document, the defendant asserted, was absolutely privileged. By sub-paras (ix) and (x) of their reply, the plaintiffs asserted malice, and during the trial counsel for the defendant suggested that the court might impinge upon the privileges of Parliament if those paragraphs of the reply which referred to Hansard were inquired into. The court invited the Attorney General's assistance as amicus curiae, following which it was held that the extracts from Hansard '... must not be used in any way which might involve questioning, in a wide sense, what was said in the House of Commons as recorded in Hansard'. In the course of his judgment on the point, Browne J said:

> In my view sub-paras (ix) and (x) must involve a suggestion that the defendant was, in one way or another, acting improperly or with an improper motive when he did and said in Parliament the things referred to in those sub-paragraphs. I accept the Attorney General's argument that the scope of parliamentary privilege extends beyond excluding any cause of action in respect of what is said or done in the House itself. And I accept his proposition which I have already tried to quote, that is, that what is said or done in the House in the course of proceedings there cannot be examined outside Parliament for the purpose of supporting a cause of action even though the cause of action itself arises out of something done outside the House. In my view this conclusion is supported both by principle and authority.

In *R* v *Secretary of State, ex parte Anderson Strathclyde Plc*,[7] the question as to the use to which Hansard could be put was again considered by the court, which considered and applied the decision of Browne J in the *Church of Scientology* case.[6] Dunn LJ, at p 239, stated:

In my judgment there is no distinction between using a report in Hansard for the purpose of supporting a cause of action arising out of something which occurred outside the House, and using a report for the purpose of supporting a ground for relief in proceedings for judicial review in respect of something which occurred outside the House. In both cases the court would have to do more than take note of the fact that a certain statement was made in the House on a certain date. It would have to consider the statement or statements with a view to determining what was the true meaning of them, and what were the proper inferences to be drawn from them. This, in my judgment, would be contrary to art 9 of the Bill of Rights. It would be doing what Blackstone said was not to be done, namely to examine, discuss and adjudge on a matter which was being considered in Parliament. Moreover, it would be an invasion by the court of the right of every member of Parliament to free speech in the House with the possible adverse effects referred to by Browne J.

The Australian case of *R* v *Murphy*[8] dealt with the question whether the makers of written statements to a Select Committee could, without breach of parliamentary privilege, be cross-examined in a criminal trial in relation to those statements. Counsel appearing as amicus curiae submitted that the witnesses could not be so cross-examined, relying for that proposition on art 9 of the Bill of Rights.

The facts giving rise to the question are summarized by Hunt J, at pp 499-500, in this way:

The particular circumstances to which the law of parliamentary privilege is said to be relevant are these:

(1) In May 1984, the principal Crown witness, Mr Briese CSM, gave a written statement to a Senate Select Committee appointed earlier that year to inquire into, and to report upon, the conduct of a federal judge. In both May and July, Mr Briese gave evidence before that committee.
(2) In July, the accused in these present proceedings gave a written statement to the committee in response to the matters detailed in Mr Briese's statement.
(3) The committee's report was presented to the Senate and ordered to be printed in August.
(4) In September, Mr Briese gave a further statement to counsel assisting a second Senate Select Committee appointed that month to inquire into, and to report upon, his allegations concerning the accused. In October, Mr Briese gave evidence before that committee.
(5) Following a specific resolution of the Senate, the statement given by the accused to the first committee was one of the documents made available by the second committee to the Commissioners appointed to assist it, and to Mr Briese and his counsel. When tendered in evidence before the second committee, however, the statement was rejected as inadmissible under the rules of evidence. The accused declined to appear as a witness before the committee.
(6) The second committee's report was presented to the Senate and ordered to be printed later the same month.
(7) In both reports, the evidence of Mr Briese is referred to in considerable detail, and parts of it are quoted. The statement given by the accused to the first committee is referred to in general terms only. I am informed that its contents have never been made public by either of the committees or by the Senate, but its precise status has not been resolved by me in these preliminary proceedings.

It will be seen, therefore, that the accused Murphy submitted a written statement to the Select Committee, but declined to appear as a witness before it.

Article 49 of the Australian Constitution contains a provision similar to s 3(1) of the Singapore Act. It provides that, until declared by Parliament itself, the privileges of the Commonwealth Parliament and of its members and committees are those of the House of Commons in the United Kingdom as at 1901. There was no contest that the Bill of Rights was part of Australian law.

Hunt J concluded, inter alia, that the courts in England had gone too far in the *Church of Scientology*[6] and *Anderson Strathclyde*[7] cases in concluding that *any* questioning of what is said in Parliament constitutes a breach of parliamentary privilege. The learned judge concluded that it was permissible to consider the contents of a statement made by a witness to Parliament, so long as it was not sought to challenge such statement in a manner which brought about consequences upon the maker of the statement. He said, at p 508:

> What is meant by the declaration that 'freedom of speech ... in Parliament ought not to be impeached or questioned in any court or place out of Parliament' is, in my view, that no court proceedings (or proceedings of a similar nature) having legal consequences against a member of Parliament (or a witness before a parliamentary committee) are permitted which by those legal consequences have the effect of preventing that member (or committee witness) from exercising his freedom of speech in Parliament (or before a committee) or of punishing him for having done so. In other words, the phrase 'impeached or questioned in any court or place out of Parliament' in art 9 should be interpreted in the sense that the exercise of the freedom of speech given to members of Parliament (and committee witnesses) may not be challenged by way of court (or similar) process having legal consequences for such persons because they had exercised that freedom.

The question is to what extent the authorities and textbooks to which I have referred assist me in determining whether the written representations of the defendant in this case can be said to have been part of proceedings in Parliament, to which absolute privilege attached.

The facts in *Lake* v *King*[2] come very close to those in the present case. Mr Wong Meng Meng, for the defendant, advanced it as major support for his argument that the position in England, even pre-Bill of Rights, was that a written representation to a committee of Parliament, no matter that it contained statements which were malicious and untruthful, attracted absolute privilege. Lord Irvine, on behalf of the plaintiffs, saw *Lake* v *King*[2] as simply no authority by which to decide that, in modern times, all written representations to all Select Committees, con-

cerning potential legislation are clothed with absolute privilege, regardless that they might contain false and malicious allegations. *Lake* v *King*,[2] he argued, was a pre-Bill of Rights case. The committee in *Lake* v *King*[2] was exercising a judicial or quasi-judicial function, which the committee in the present case was not. All *Lake* v *King*[2] established was that when Parliament is exercising a judicial or quasi-judicial function, then a stranger who is a witness before it enjoys the same privilege as if he were a witness before a court of law. That was clear, said Lord Irvine, from the passage at p 139 of the report which states that no action lay against King because the Committee sat 'in a summary course of justice' and comprised 'those who have power to examine (the petition) whether it be true or false'.

I do not consider the fact that the Select Committee in *Lake* v *King*[2] was exercising a judicial or quasi-judicial function, rather than a legislative one, affects the value of the case as authority. No case was cited to me in which that distinction was made for any purpose. I am not impressed, either, with the fact that *Lake* v *King*[2] was a pre-Bill of Rights case, because it is clear that the Bill, and accordingly art 9 of it, were declaratory of the position with regard to parliamentary privilege as it existed prior to 1688. I therefore regard *Lake* v *King*[2] as strong authority in support of an affirmative finding on the issue, it having been there held that it 'was in the order and course of proceedings in Parliament' that the defendant King had caused to be printed and delivered to the Committee the petition complained of by the plaintiff Lake.

In so far as *Goffin* v *Donnelly*[3] is concerned, Lord Irvine contended that the case is of no assistance at all. It makes no reference to the Bill of Rights; the Select Committee referred to in it was set up for a particular purpose and exercised a judicial function; and in any event, the court applied the analogy of a witness present and given evidence in a court of law.

In my judgment, *Goffin* v *Donnelly*[3] dealt, without a doubt, with the question of parliamentary privilege. The fact that the Committee exercised a judicial function, and was set up for a particular purpose, is immaterial. The value of the case lies in the importance attached by the court to the principle that a witness before a parliamentary committee should feel free to give evidence without any apprehension as to the consequences of doing so, even if persons prejudiced by such evidence might have no opportunity to rebut it. Incidentally, if it be said that Field J's mind was affected by the fact that a witness before a parliamentary committee was compellable, and might be committed for contempt if he failed to attend, then the same can be said of the position in Singapore since Standing Order 98(2) empowers Select Committees to 'send for persons', and s 20(2) of the Singapore Act provides sanctions for contempt.

Lord Irvine submitted that *Rivlin's*[4] case is of little value, since it makes no reference to the Bill of Rights, and does not support the proposition that under the Bill of Rights the defendant would be entitled to absolute privilege. All the case showed was that the privilege is that of a witness who gives oral evidence. In my judgment, *Rivlin*[4] goes further. The issue in the case was whether or not the court's jurisdiction was ousted by parliamentary privilege in that the defendant's communications were connected with 'proceedings in Parliament', in the sense of art 9 of the Bill of Rights, although the Bill was not expressly referred to. The inference is that, had the defendant been able to establish that his communication was connected with proceedings in Parliament, he would have succeeded.

The *Church of Scientology*[6] and *Strathclyde*[7] cases demonstrate the extent to which the courts in England are prepared to go in ensuring that proceedings in Parliament are not impeached. Although Hunt J, in *R* v *Murphy*,[8] took a more restrictive view, he nonetheless held that the accused in a criminal trial could not, without breach of parliamentary privilege, be cross-examined in relation to a statement made to a Select Committee, although he had declined to appear as a witness before the Committee.

In the result, I am persuaded by such authority as exists, that the defendant's written representations to the Select Committee would have attracted absolute privilege had they been made to a Select Committee of the Commons House of Parliament of the United Kingdom. In my judgment, the act of the defendant in submitting written representations was so ancillary to, and connected with proceedings in Parliament, as to become part of those proceedings. Put another way, they were part of the parliamentary process by which the House reached its decision on the Bill laid before it.

It is true that the defendant Sivadas was not invited to attend before the Select Committee in order to give evidence in support of his representations. But whether or not he was so invited was a matter entirely in the hands of the Committee. He could have been invited; he might even have been 'sent for' or summoned. The fact that he was not should surely not affect the character of the representations he made, in the sense of clothing them with absolute privilege if he gave evidence in support of them, and depriving them of privilege if he did not. A situation can be envisaged in which written representations might be made which are so complete and explicit that the Select Committee considering them does not require the representor to attend and support them by oral evidence. Is such a representor to be at a disadvantage, in terms of privilege, compared to one whose representations require explanation or elaboration, and who is thus required to attend and give evidence before the Committee for this purpose? That would be a remarkable, and unjust, result.

I have reached my conclusion notwithstanding Lord Irvine's powerful submission that absolute privilege does not extend to written communications addressed to a Select Committee, whether or not they are invited, when the communicator does not give evidence in person. Lord Irvine conceded that in order to succeed in the action his clients must show malice, but he argued that it was quite another thing to say that the defendant was entitled to his claim to absolute privilege. Sound public policy requires, he contended, that the privileges of Parliament should be kept within reasonable bounds so as to involve the minimum curtailment of a litigant's ordinary right to claim damages for a wrong done to him. This was particularly so when the claim to privilege was not by Parliament, or a member of Parliament, but by a stranger.

Lord Irvine urged me to adopt, by analogy, the approach of Lord Wilberforce in *Roy* v *Prior*.[9] The facts and determination of that case are set out in the headnote, which reads:

> At the trial of A for larceny, his solicitor, the defendant in the present action, issued a witness summons requiring the attendance of the plaintiff, a doctor, to give evidence in A's defence. The subpoena was not served and the defendant took the view that the plaintiff was evading service. Accordingly he instructed counsel to apply for the issue of a bench warrant to compel the plaintiff's attendance and he gave evidence himself in support of the application. The plaintiff was arrested and compelled to give evidence.
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> The plaintiff brought an action against the defendant claiming damages for causing his arrest and his being forcibly brought to court to give evidence. The Court of Appeal, allowing the defendant's appeal from the decision of MacKenna J refusing to dismiss the action, ordered the statement of claim to be struck out on the ground that it disclosed no maintainable cause of action. The Appeal Committee gave the plaintiff leave to appeal on condition that the pleadings were amended to disclose an allegation of malicious arrest.
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> On the plaintiff's appeal:
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> Held, that the action should not be dismissed as disclosing no cause of action; that although no action would lie against a witness for words spoken in giving evidence, an action in respect of an alleged abuse of the process of the court was not to be defeated even though one step in the abuse involved the giving of evidence.

In the course of his brief speech, Lord Wilberforce said:

> The reasons why immunity is traditionally (and for this purpose I accept the tradition) conferred upon witnesses in respect of evidence given in court, are in order that they may give their evidence fearlessly and to avoid a multiplicity of actions in which the value or truth of their evidence would be tried over again. Moreover, the trial process contains in itself, in the subjection to cross-examination and confrontation with other evidence, some safeguard against careless, malicious or untruthful evidence.
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> But none of this applies as regards such evidence as was given in support of the application for a bench warrant. It was given ex parte: Dr Roy had no means, and no other party any interest, in challenging it: so far from the public interest requiring that it be given absolute protection, that interest requires that it should have been given carefully, responsibly and impartially. To deny a person whose liberty has been interfered with any opportunity of showing that it was ill founded and malicious, does not in the least correspond with, and is a far more serious denial than, the traditional denial of the right to attack a witness to an issue which has been tested and passed upon after a trial. Immunities conferred by the law in respect of legal proceedings need always to be checked against a broad view of the public interest. So checked, the present case provides no justification for protecting absolutely what the solicitor said in the court. I need not add that I am not prejudging in any way whether what he said was well founded or lacking in malice. That is for the action to decide.

Lord Wilberforce's approach, it was said, applied word for word to the issue of whether the plaintiffs in this case should be entitled to vindicate themselves, allegedly having been libelled by the ex parte representations of the defendant, which were untested by the Select Committee since the defendant was not invited to give evidence.

The main speech in *Roy* v *Prior*[9] was delivered by Lord Morris of Borth-y-Gest. Lords Reid, Dilhorne and Diplock agreed with his reasoning. In the course of his speech, Lord Morris said:

> It is well settled that no action will lie against a witness for words spoken in giving evidence in a court even if the evidence is falsely and maliciously given (see *Dawkins* v *Lord Rokeby* (1873) LR 8 QB 255, *Watson* v *M'Ewan* [1905] AC 480). If a witness gives false evidence he may be prosecuted if the crime of perjury has been committed but a civil action for damages in respect of the words spoken will not lie (see the judgment of Lord Goddard CJ in *Hargreaves* v *Bretherton* [1959] 1 QB 45). Nor is this rule to be circumvented by alleging a conspiracy between witnesses to make false statements (see *Marrinan* v *Vibart* [1963] 1 QB 528).
>
> This, however, does not involve that an action which is not brought in respect of evidence given in court but is brought in respect of an alleged abuse of process of court must be defeated if one step in the course of the abuse of the process of the court involved or necessitated the giving of evidence.
>
> It must often happen that a defendant who is sued for damages for malicious prosecution will have given evidence in the criminal prosecution of which the plaintiff complains. The essence of the complaint in such a case is that criminal proceedings have been instituted not only without reasonable and probable cause but also maliciously. So also in actions based upon alleged abuse of the process of the court it will often have happened that the court will have been induced to act by reason of some false evidence given by someone. In such cases the actions are not brought on or in respect of any evidence given but in respect of malicious abuse of process (see *Elsee* v *Smith* (1822) 2 Chit 304).

It is evident, therefore, that Lord Morris, and their Lordships other than Lord Wilberforce, considered as inviolate the principle that no action lies against a witness arising out of evidence given in court, even if that evidence be false and malicious. It must follow that the principle applies even if the evidence is given ex parte and is not open to challenge, and whether or not the evidence was 'given carefully, responsibly and impartially'.

Accordingly, I find myself, with great respect, unable to adopt in the present case the approach of Lord Wilberforce.

I turn now to consider whether the position which I have concluded prevails in the United Kingdom is in any way affected by the provisions of the Singapore Act. Section 3(1) and (2) of the Singapore Act are in the following terms:

> 3(1) Save as is otherwise expressly provided in the Constitution and in this Act, the privileges, immunities and powers of Parliament and of the Speaker, members and committees shall be the same as those for the time being held, enjoyed or exercised by the Commons House of Parliament of the United Kingdom or the Speaker, members or committees thereof.
>
> (2) Such privileges, immunities and powers shall for all purposes be construed and have effect as if such privileges, immunities and powers were prescribed by this Act, and it shall not be necesssary in all proceedings to plead the same but the same shall be judicially noticed in all the courts.

Section 4 of the Singapore Act, which in effect mirrors art 9 of the Bill of Rights, makes the following provisions:

> There shall be freedom of speech and debate and proceedings in Parliament, and such freedom of speech and debate and proceedings shall not be liable to be impeached or questioned in any court, commission of inquiry, tribunal or any other place whatsoever out of Parliament.

The Singapore Act deals with privileges and immunities in s 5, which states:

> 5(1) No member shall be liable to any civil or criminal proceedings, arrest, imprisonment, or damages by reason of any matter or thing which he may have brought before Parliament or a committee by petition, bill, resolution, motion, or otherwise or may have said in Parliament or in committee.
>
> (2) No person shall be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of any act done under the authority of Parliament or the Speaker and within its or his legal powers or under any warrant issued by virtue of these powers.

The marginal note to s 17 of the Singapore Act reads: 'Immunity of witness in respect of evidence', and sub-s (1) of that section is in the following terms:

> Without prejudice to the provisions of section 16 of this Act and subject to the provisions of sub-section (3) of this section, no person who gives evidence before Parliament or any committee shall be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of anything which he may have said in such evidence.

It is apparent that the Singapore Act has taken art 9 of the Bill of Rights as its starting point for the purposes of providing for privileges and immunities. The Singapore Act then sets out to add flesh to s 4 by providing, in s 5(1) for exemption from liability for members; and in s 5(2) for exemption from liability for any person, other than a member, who acts 'under the authority of Parliament ... '

It is said, on behalf of the plaintiffs, that s 5(2) has nothing to do with strangers, and that what s 5(2) is concerned with are things done in the name of and on behalf of Parliament by persons authorized by Parliament, in cases where Parliament is acting within its powers and priviieges. Thus, as occurred in *Bradlaugh* v *Gossett*,[10] were an officer of the Singapore Parliament to exclude a member from the House in obedience to a resolution of the House directing him to do so, an action against such officer would not lie by virtue of s 5(2). The sub-section, it was argued, did not authorize the defendant's written representations and affords him no exemption from liability for their contents.

I am unable to agree that s 5(2) justifies the restrictive construction placed upon it by counsel for the plaintiffs. In my judgment, the word 'person' in that subsection means any person, and includes strangers. Both the Clerk of Parliament and the defendant, the one by inviting representations and the other by responding to his invitation, were performing acts under the authority of Parliament by virtue of Standing Order 75. It follows, in my view, that the defendant is entitled to the immunity provided by s 5(2) of the Singapore Act.

I do not regard this conclusion to be inconsistent either with the presence in the Singapore Act of s 17(1), or with the provisions of that sub-section. Section 5(2) confers immunity for acts done under the authority of Parliament. Those acts might or might not involve the making of representations. Section 17(1) is of a narrower ambit. It provides only for the immunity of witnesses who give evidence before Parliament or a committee of Parliament, and I take the view that it is intended to apply to witnesses who appear and give evidence in person. The use of the expression 'no person' in s 17(1) suggests to me that it applies, as does s 5(2), to any person who appears before Parliament or a committee in the character of a witness, and it is the final word on the immunity of such a person.

There is therefore no conflict between the provisions of ss 4, 5(2) and 17(1) of the Singapore Act; nor do the provisions of any one of them render otiose the provisions of any other. Section 4 is a general statement which reflects art 9 of the Bill of Rights; s 5(2) deals with the acts of all persons done under the authority of Parliament; and s 17(1) confers immunity on all persons who appear and give evidence in person. The facts of the present case have resulted in an overlap in the provisions of ss 5 (2) and 17(1), on my view of their meaning, but I do not apprehend that to be an uncommon result of the proper construction of a statute.

Accordingly, I find that the immunities of Parliament in Singapore are those which I have concluded exist in the United Kingdom, and that these immunities include exemption from civil and criminal liability arising

out of the contents of written representations made by a member of the public to Parliament concerning a Bill before a Select Committee, made in response to an invitation by the Clerk of Parliament, when the representor has not appeared before the Committee and given evidence in person. The question may arise at some time as to whether an unsolicited representation to a Select Committee attracts privilege. That is not a question I propose to address since it does not arise in this case, and could depend on special facts.

Lord Irvine submitted that the existence of parliamentary privilege is due to considerations of public policy, and when a question as to its extent arises, the answer depends upon a balancing by the court of the need to protect proceedings in Parliament with the need to protect citizens who have been wrongfully injured. He argued that it would therefore be consonant with public policy to hold that qualified privilege attaches in relation to written representations to a Select Committee; and that absolute privilege attaches only to oral evidence given by a witness physically present. It is good for democracy, said Lord Irvine, that Parliament should invite the public at large to make representations, but this opportunity for public consultation is open to abuse if the law is that every person who responds to Parliament's invitation to make written representations is thereby given carte blanche to defame without fear of consequences.

This was a theme to which Lord Irvine returned, in one form or another, at several points in his argument. In answer to it, I would say this. There was nothing before me to suggest that in Singapore written representations to Select Committees have been regarded by representors as charters to defame under the cloak of absolute privilege. Were that to happen, it would be reasonable to expect Parliament to enact legislation to define 'proceedings in Parliament' so as to exclude written representations to Select Committees in cases where the representor does not attend and give evidence in person.

Unless and until such legislation is passed into law in Singapore, it remains, in my judgment, in the overriding public interest that written representations to Parliament should attract absolute privilege, so that persons making them in the discharge of their rights should feel free to do so without being threatened with, or vexed by proceedings, whether they be civil or criminal.

It follows that I answer the preliminary question or issue affirmatively. Since that answer disposes of the plaintiffs' cause, and so renders the trial of this matter unnecessary, I dismiss the plaintiffs' claim. They must pay the defendant's costs of the action.

Order accordingly.

Solicitors: *Godwin & Co*; *Shook Lin & Bok*.

Reported by *Ng Sheau Jiuan*

Anthony Wee Soon Kim v The Law Society of Singapore

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 157 OF 1988
CHAN SEK KEONG JC
23 MAY 1988

Legal Profession – Complaint against solicitors making reckless allegations and failing in duty to verify those allegations of client – Dismissal of complaint by Council – Whether court has original jurisdiction to hear complaint – Standard of duty of solicitor to verify client's information – Legal Profession Act (Cap 161, 1985 Ed), s 93

Civil Procedure – Original jurisdiction of court to hear complaint against solicitor after Council's dismissal of the complaint – Whether there exists such jurisdiction – Legal Profession Act (Cap 161, 1985 Ed), s 93(4)

This was an application by the plaintiff made pursuant to s 93 of the Legal Profession Act (Cap 161, 1985 Ed) ('the Act') for an order that the Law Society of Singapore be directed to apply to the Chief Justice for the appointment of a disciplinary committee to investigate the complaint of the plaintiff against two advocates and solicitors, GSH and TKQ. The substance of the complaint was that both GSH and TKQ made reckless allegations against the plaintiff and that TKQ as solicitor for GSH failed, inter alia, to verify the source of GSH's information.

The complaint was considered by the inquiry committee and the Law Society Council subsequently accepted the report of the inquiry committee that the complaint did not merit a formal investigation by a disciplinary committee. The plaintiff, being dissatisfied with the Council's determination, commenced the present proceedings.

Held, dismissing the application: (1) Section 93(4) of the Act does not vest in a judge original jurisdiction to hear a complaint against an advocate and solicitor. Section 93(4) does not contemplate such a hearing. The court has no jurisdiction to inquire into any complaint which has not been inquired into by the inquiry committee or where the Council has not made a determination on the basis of such an inquiry. The court's jurisdiction is only supervisory or appellate in nature.

(2) The plaintiff has available to him other remedies against a defaulting inquiry committee or Council, eg an order of mandamus against the inquiry committee or the Council, or a declaratory order.

(3) In respect of the complaint against TKQ that he made libellous statements against the plaintiff recklessly, the Council's determination in dismissing it could not be challenged since the plaintiff did not and could not challenge the findings of fact.

(4) In respect of the complaint that TKQ failed to take steps to verify the truth of those statements, the Council's determination in dismissing it is also affirmed. It is not for an advocate and solicitor to believe or disbelieve his client's instructions, unless he himself has personal knowledge of the matter or unless his client's statements are inherently incredible or logically impossible. His duty to his client does not go beyond advising him of the folly of making incredible or illogical statements.

Cases referred to

1 *Re An Advocate & Solicitor* [1987] 2 MLJ 21 (refd)
2 *P Suppiah* v *The Law Society of Singapore* [1986] 1 MLJ 459 (CA) (refd)